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Los Alamos, New Mexico 87544

Risk Reduction & Environmental Stewardship Division
WATER QUALITY & HYDROLOGY GROUP, RRES-WQH

FAX TRANSMITTAL SHEET

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DATE: 9/26/2003 LOG NO: WQH-FAX-04-
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MESSAGE: Comments on Proposed Antidegradation Implementation Procedures

NUMBER OF PAGES TO FOLLOW: 3

Cy: WQH Fax File

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Date: January 12, 2004
Refer to: RRES-WQH: 04-006

Mr. Glenn Saums
Point Source Regulation Section, Program Manager
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

SUBJECT: COMMENTS ON PROPOSED REVISION TO THE NEW MEXICO CONTINUING PLANNING PROCESS DOCUMENT TO ESTABLISH IMPLEMENTATION PROCEDURES FOR THE ANTIDEGRADATION POLICY IN THE NEW MEXICO WATER QUALITY STANDARDS (20.6.4.8.NMAC)

Dear Mr. Saums:

Los Alamos National Laboratory is pleased to have the opportunity to comment on the Proposed Revision to the New Mexico Continuing Planning Process (CPP) Document to Establish Implementation Procedures for the Antidegradation Policy in the New Mexico Water Quality Standards (20.6.4.8.NMAC). Overall, the proposed antidegradation implementation closely follows Environmental Protection Agency guidance and appears to take careful notice of recent court decisions on this subject. The Laboratory offers the following comments for your consideration in finalizing the revision to the CPP document.

1. Section II.A: The proposed procedures apply to both existing and designated uses. The inclusion of designated uses is not required by federal policy and has been adopted by few, if any, states. The antidegradation policy was first articulated by the Secretary of the Department of the Interior in 1968 and was referred to as the "nondegredation policy". The policy was developed in response to criticism that water quality standards were a license for water to be polluted up to those levels, in contradiction to the Clean Water Act goal of restoring and maintaining the integrity of the nation's waters. ("Compendium of Department of Interior Statements on Non-degradation of Interstate Waters", Federal Water Pollution Control Administration, August, 1968.) Since the promulgation of the antidegradation policy in 1975, it has only addressed existing uses. The water quality necessary to protect existing uses was considered to be the baseline and water quality should not degrade below that baseline. The inclusion of designated uses sets the baseline at a level that is potentially above the existing use. It would be impossible to maintain a use that is not yet been attained. (Attainment of designated uses is addressed elsewhere in Clean Water Act regulations and

policies). While the establishment of existing uses is fairly straightforward and generally cannot be changed, the assignment of designated uses is often subject to change as new information becomes available. As an example, in the NMED's proposed revisions to the water quality standards for the upcoming Triennial Review, the designated uses of three water bodies are changed because they were "erroneously" designated. **We recommend that the antidegradation procedures apply only to existing uses.**

2. Section III.A.2.a.1: It is not clear why there are different *de minimus* exceptions for publicly-owned and private domestic treatment works and industrial discharges. If these *de minimus* conditions are deemed to have insignificant impacts on water quality, then the insignificance of the impact should be the same regardless of the source of the discharge. **We recommend that *de minimus* exceptions for industrial discharges be identical to those for publicly owned and private domestic treatment works.**

3. Section III.A.2.a.1: The proposed revision places an emphasis on predicting used and remaining assimilative capacity for a discharge. Therefore, the calculation of assimilative capacity is a critical element of antidegradation implementation. Assimilative capacity is defined in this document, but there is no reference to the methodology for estimating assimilative capacity. The calculation of assimilative capacity is usually not simple, as is shown by a look at the methodology from other states, e.g. Colorado (http://www.cdphe.state.co.us/op/wqcc/Other/wqguiddoc.html), New York (http://www.dec.state.ny.us/website/dow/togs/tog_cont.htm#5.0), and Ohio (http://www.epa.state.oh.us/dsw/guidance/model5.pdf). **We recommend that the method for doing these calculations be included in this section of the CPP or in a protocol referenced in this section.**

4. Figure 2: Showing the Tier 2 review eligibility process on a figure is very helpful. However, there are items missing from the figure that are stated in the text. **We recommend that a symbol and note be added so the reader can refer to the text for additional information.**

   For example:
   - The first box refers only to "new or increased" discharge, whereas in the text, permits that are up for renewal are potentially eligible.
   - The box that says "Is the volume increase ≤10% of the 4Q3" is referring to the critical low flow. However, for some pollutants, the critical low flow is defined as the harmonic mean flow. The table should match the text in saying "as defined in the water quality standards".
   - The text (page 7 of 24) indicates an additional decision step after the *de minimus* tests, where the proposed discharge, taken together with all other activities, would cause a reduction in the available assimilative capacity. This decision step is not shown or referenced on Figure 2.
   - If the *de minimus* tests are the same for all discharges, Figure 2 could be simplified.

5. Section III.b.3: This section is titled "Public Comment and Intergovernmental Coordination", but it only addresses public comment. There is no description of intergovernmental coordination. If other governmental organizations are expected to coordinate using the same process as the public, that should be stated. **We recommend that the process for intergovernmental coordination be described in this section.**

6. Section III.b.4: The process for Tier 2 review, as described, takes a minimum of 240 days from the day an application for a new, increased, or renewed permit is submitted to the NMED Surface Water Quality Bureau. The time required for this review appears to be excessive. **We recommend that this process be examined for potential streamlining opportunities.**

Thank you for the opportunity to comment on these proposed revisions. Please contact Fred Fisher at (505) 665-2397 if additional information regarding our comments would be helpful.

Sincerely,

Steven Rae
Group Leader
Water Quality & Hydrology Group

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Date: January 23, 2004
Refer to: RRES-WQH: 04-011

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SUBJECT: ADDENDUM TO COMMENTS ON PROPOSED REVISION TO THE NEW MEXICO CONTINUING PLANNING PROCESS DOCUMENT TO ESTABLISH IMPLEMENTATION PROCEDURES FOR THE ANTIDEGRADATION POLICY IN THE NEW MEXICO WATER QUALITY STANDARDS (20.6.4.8 NMAC)

Dear Mr. Saums:

Los Alamos National Laboratory is providing one additional comment for your consideration on the Proposed Revision to the New Mexico Continuing Planning Process (CPP) Document to Establish Implementation Procedures for the Antidegradation Policy in the New Mexico Water Quality Standards (20.6.4.8.NMAC). Our additional comment concerns the proposed application of the antidegradation policy to both existing and designated uses. 20.6.4.8.A(1) NMAC provides that "[e]xisting instream water uses and the level of water quality to protect the existing uses shall be maintained and protected in all surface waters of the state." We believe the express language of that section limits its application to "existing uses" and does not allow the extension of the policy to designated uses.

We hope that this additional comment will be helpful to you in finalizing the CPP document. Please call Fred Fisher at (505) 665-2397 if additional information would be helpful.

Sincerely,

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